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PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The Following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT GOODS AND SERVICES TAX (AMENDMENT) BILL, 2021.

GUJARAT BILL NO. 22 OF 2021.

A BILL

further to amend the Gujarat Goods and Services Tax Act, 2017.

It is hereby enacted in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Gujarat Goods and Services Tax (Amendment) Act, 2021.
(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint:

**Short title and
commencement.**

Provided that different dates may be appointed for different provisions of this Act.

- Guj. 25 of 2017. 2. In the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as “the principal Act”), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted from the 1st July, 2017, namely:—

**Amendment of
section 7 of Guj.
25 of 2017.**

“(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another;”.

Amendment of section 16 of Guj. 25 of 2017.

3. In the principal Act, in section 16, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.

Amendment of section 35 of Guj. 25 of 2017.

4. In the principal Act, in section 35, sub-section (5) shall be deleted.

Substitution of section 44 of Guj. 25 of 2017.

5. In the principal Act, for section 44, the following section shall be substituted, namely:—

Annual return.

“44. Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.

Amendment of section 50 of Guj. 25 of 2017.

6. In the principal Act, in section 50, in sub-section (1), for the existing proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.”.

7. In the principal Act, in section 74, in *Explanation* 1, in clause (ii), for the words and figures “sections 122, 125, 129 and 130”, the words and figures “sections 122 and 125” shall be substituted. **Amendment of section 74 of Guj. 25 of 2017.**
8. In the principal Act, in section 75, in sub-section (12), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.”. **Amendment of section 75 of Guj. 25 of 2017.**
9. In the principal Act, in section 83, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.”. **Amendment of section 83 of Guj. 25 of 2017.**
10. In the principal Act, in section 107, to sub-section (6), the following proviso shall be inserted, namely:—

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”. **Amendment of section 107 of Guj. 25 of 2017.**
11. In the principal Act, in section 129,— **Amendment of section 129 of Guj. 25 of 2017.**
(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely: -
“(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”;
(ii) sub-section (2) shall be deleted;
(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;

(iv) in sub-section (4), for the words “No tax, interest or penalty”, the words “No penalty” shall be substituted;

(v) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”.

**Amendment
of section 130
of Guj. 25 of
2017.**

12. In the principal Act, in section 130,—

(a) in sub-section (1), for the words “Notwithstanding anything contained in this Act, if”, the word “Where” shall be substituted;

(b) in sub-section (2), in the second proviso, for the words, brackets and figures “amount of penalty leviable under sub-section (1) of section 129”, the words “penalty equal to hundred per cent. of the tax payable on such goods” shall be substituted;

(c) sub-section (3) shall be deleted.

**Substitution of
section 151 of
Guj. 25 of
2017.**

13. In the principal Act, for section 151, the following section shall be substituted, namely:—

**Power to
collect
Statistics.**

“151. The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”.

**Amendment
of section 152
of Guj. 25 of
2017.**

14. In the principal Act, in section 152,—

(a) in sub-section (1),—

(i) the words “of any individual return or part thereof” shall be deleted;

(ii) after the words “any proceedings under this Act”, the words “without giving an opportunity of being heard to the person concerned” shall be added;

(b) sub-section (2) shall be deleted.

**Amendment to
Schedule II of
Guj. 25 of
2017.**

15. In the principal Act, in Schedule II, para 7 shall be deleted and shall be deemed to have been deleted with effect from the 1st day of July, 2017.

STATEMENT OF OBJECTS AND REASONS

The Gujarat Goods and Services Tax Act, 2017 (the said Act) was enacted with a view to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Government. The proposed Gujarat Goods and Services Tax (Amendment) Bill, 2021, *inter alia*, provides for the following, namely:-

- (i) to amend section 7 of the Gujarat Goods and Services Tax Act, 2017, with retrospective effect from the 1st day of July, 2017, by inserting a new clause (aa) in sub-section (1) thereof, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration and to insert an *Explanation* therein, to clarify that the person or its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one person to another.
- (ii) to amend section 16 of the Gujarat Goods and Services Tax Act by inserting a new clause (aa) in sub-section (2) thereof, so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.
- (iii) to delete sub-section (5) of section 35 of the Gujarat Goods and Services Tax Act so as to remove the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by specified professional.
- (iv) to amend section 50 of the Gujarat Goods and Services Tax Act to substitute the proviso to sub-section (1) so as to charge interest on net cash liability retrospectively with effect from the 1st day of July, 2017.
- (v) to amend section 74 of the Gujarat Goods and Services Tax Act so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.
- (vi) to substitute sub-section (1) of section 83 of the Gujarat Goods and Services Tax Act so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.
- (vii) to insert a new proviso in sub-section (6) of section 107 of the Gujarat Goods and Services Tax Act so as to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.
- (viii) to amend section 129 of the Gujarat Goods and Services Tax Act so as to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.
- (ix) to amend section 130 of the Gujarat Goods and Services Tax Act, so as to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
- (x) to substitute section 151 of the Gujarat Goods and Services Tax Act so as to empower the commissioner to call for information from any person relating to any matters dealt with in connection with the Act.
- (xi) to amend sub-section (1) of section 152 of the Gujarat Goods and Services Tax Act so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

The Bill seeks to amend the said Act to achieve the aforesaid objects.

The following notes on clauses explain, in brief, the important provisions of the Bill:-

- Clause 1.-** This clause provides for the Short title and Commencement.
- Clause 2.-** This clause seeks to amend section 7 of the Gujarat Goods and Services Tax Act, 2017, with retrospective effect from the 1st day of July, 2017, by inserting a new clause (aa) in sub-section (1) thereof, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.
- It further seeks to insert an *Explanation* therein, to clarify that the person or its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one person to another.
- Clause 3.-** This clause seeks to amend section 16 of the Gujarat Goods and Services Tax Act by inserting a new clause (aa) in sub-section (2) thereof, so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.
- Clause 4.-** This clause seeks to delete sub-section (5) of section 35 of the Gujarat Goods and Services Tax Act so as to remove the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by specified professional.
- Clause 5.-** This clause seeks to substitute a new section for section 44 of the Gujarat Goods and Services Tax Act so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis. It further empowers the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.
- Clause 6.-** This clause seeks to amend section 50 of the Gujarat Goods and Services Tax Act to substitute the proviso to sub-section (1) so as to charge interest on net cash liability retrospectively with effect from the 1st day of July, 2017.
- Clause 7.-** This clause seeks to amend section 74 of the Gujarat Goods and Services Tax Act so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.
- Clause 8.-** This clause seeks to amend section 75 of the Gujarat Goods and Services Tax Act so as to insert an *Explanation* in sub-section (12) to clarify that “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.
- Clause 9.-** This clause seeks to substitute sub-section (1) of section 83 of the Gujarat Goods and Services Tax Act so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.
- Clause 10.-** This clause seeks to insert a new proviso in sub-section (6) of section 107 of the Gujarat Goods and Services Tax Act so as to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.
- Clause 11.-** This clause seeks to amend section 129 of the Gujarat Goods and Services Tax Act so as to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

- Clause 12.-** This clause seeks to amend section 130 of the Gujarat Goods and Services Tax Act, so as to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
- Clause 13.-** This clause seeks to substitute section 151 of the Gujarat Goods and Services Tax Act so as to empower the commissioner to call for information from any person relating to any matters dealt with in connection with the Act.
- Clause 14.-** This clause seeks to amend sub-section (1) of section 152 of the Gujarat Goods and Services Tax Act so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.
- Clause 15.-** This clause seeks to delete paragraph 7 of Schedule II to the Gujarat Goods and Services Tax Act, with retrospective effect from the 1st day of July, 2017, consequent to the amendments made in section 7.

KANUBHAI DESAI,

MEMORANDUM REGARDING DELEGATED LEGISLATION

- Clause 1.-** Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette* the date on which the Act shall come into force.
- Clause 5.-** (i) Section 44 proposed to be substituted by this clause empowers the State Government to prescribe by rules, the time within which and the form and manner in which every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return.
- (ii) First proviso to section 44 as so substituted by this clause empowers the Commissioner to exempt filing annual return from any class of registered persons on the recommendation of council under the said section 44.
- Clause 9.-** Sub-section (1) of section 83 substituted by this clause empowers the State Government to prescribe by rules the manner in which the Commissioner may attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122.
- Clause 10.-** sub-section (6) of section 129 substituted by sub-clause (v) of this clause empowers the State Government to prescribe by rules the manner in which and the time within which the goods or conveyance detained or seized under that section shall be sold or disposed of.

Dated the 21st September, 2021

KANUBHAI DESAI.

By order and in the name of the Governor of Gujarat,

K. M. LALA,

Gandhinagar.
Dated the 22nd September, 2021.

Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department

